UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

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To	From
Chuck Figur	M. Goodstein
Dept./Agency	Phone #
Fax # 303-312-6915	Fax #

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

Mr. John Likarish
President
Encycle/Texas, Inc.,
5500 Up River Road
Corpus Christi, TX 78407

Re: Notice of Violation-Encycle/Texas, Inc.,
EPA I.D. Number TXD008117186
Regulatory Status of Materials Used in Smelting Process

Dear Mr. Likarish:

On the basis of information available to me, and as authorized by the Administrator of the United States Environmental Protection Agency (EPA), I find that Encycle/Texas, Inc. (ETI), located in Corpus Christi, Texas has violated the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. Section 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Public Law No. 98-616.

Pursuant to Section 3006 of RCRA, 42 U.S.C. Section 6926, the State of Texas is authorized by the EPA to conduct a hazardous waste program. However, EPA is authorized to conduct RCRA Compliance Evaluation Inspections (CEI) in delegated states and take enforcement action, when appropriate, for any violations discovered.

On or about February 27 - March 8, 1996, EPA conducted a RCRA CEI of your facility. On or about June 17-20, 1997, the Texas Natural Resource Conservation Commission (TNRCC) and EPA conducted a CEI and Case Development Inspection (CDI), respectively. During these inspections, several areas of concern were discovered which were discussed with your staff during the exit briefing.

Pursuant to Section 3007 of RCRA, U.S.C. 6927, EPA retains authority to issue a Request for Information (RFI) in delegated states, such as Texas, and to take enforcement action, when appropriate, for any violations discovered.

On or about August 28, 1996, EPA mailed a 3007 RFI to your facility pertaining to your hazardous waste activities. We received your response. In addition, a second RFI was mailed to your facility on March 4, 1997. Your response was received. During the review of these RFIs, several areas of concern were discovered regarding your hazardous waste management operation.

Upon review of the RFIs, TNRCC files and EPA's inspections, EPA discovered the following violations of RCRA, as set forth below:

- Treating hazardous wastes without a permit or interim status is a violation of RCRA Section 3005(a) and 40 code of federal regulations (C.F.R.) § 270.1.

  ETI is, and has been treating and blending hazardous waste without a permit or interim status. The facility has been operating under the recycle exemption. ETI does not qualify for this exemption, because it does not recycle the hazardous waste it receives. The waste is treated, blended, or repackaged and transported to smelters for reclamation. ETI has a RCRA hazardous waste storage permit but not a hazardous waste treatment permit.

- Failure to comply with requirements for the exporting of hazardous waste found at 30 TAC § 335.76 [40 C.F.R. § 262, Subpart E].

  ETI has not notified EPA of its intent to export hazardous waste and has not complied with any of the "export of hazardous waste requirements". ETI's hazardous waste is sent unmanifested to Canada, Peru, and China.

- Failure to comply with the packaging, labeling, marking and placarding of hazardous wastes as required by 30 TAC § 335.63-68 [40 C.F.R. § 262, Subpart C].

  ETI does not package, label, mark or placard the hazardous waste in accordance with the applicable Department of Transportation (DOT) regulations on packaging under 49 CFR Part 172.

- Failure to comply with recordkeeping and reporting as required by 30 TAC § 335.112 and 114 [40 C.F.R. § 265, Subpart E].

When ETI first treated and blended the off-site listed and characteristic hazardous waste, ETI became a generator of new listed hazardous waste streams. ETI should have performed all the reporting and record keeping requirements. ETI failed to submit a biennial report informing the Regional Administrator of the outcome of the hazardous waste received, treated and blended. Also, the facility failed to submit an unmanifested waste report (for waste claimed to be Bevill and RCRA exempted) and the required additional reports. There were no records of the waste after it entered the "process" or site prior to 1996. Biennial Reports were submitted for hazardous waste generated by ETI, but not for the hazardous waste streams generated from off-site hazardous waste. Even though ETI kept the initial record of receipt and waste analysis of off-site waste, it failed to manage the hazardous waste to the "grave".

- Storage of hazardous waste "product" in unpermitted storage areas as found in 30 TAC § 335 [40 C.F.R. § 262.34 and 40 CFR Part 270].

  ETI stores treated/blended listed and characteristic hazardous waste, and alleged Bevill and RCRA exempt waste (baghouse dust, Glover Matte, F002, F003, F005, F006, F019, D007, D008, K046, etc.) in unpermitted areas. These areas were not labeled with hazardous waste signs. Containers/supersacks were not labeled with the words "hazardous waste". ETI alleges that its waste is recycled or is not a solid waste, because it is used as an effective substitute for a commercial products (40 CFR 262.2(e)(I)).

- Failure to conduct waste analysis and record keeping as required by 30 TAC § 335.509-510 [40 C.F.R. § 268.7].

  ETI failed to test the hazardous waste "product" to determine if the waste can be land disposed without further treatment. Certification stating that the waste meets the applicable treatment standards was not submitted with each shipment of waste. Because of this deviation, receiving facilities/smelters may not be properly storing and managing the hazardous waste materials. ETI said an assessment was done, but not in accordance with RCRA.

- Failure to comply with the tank system requirements for storing or treating hazardous waste in tanks found in 30 TAC § 335.112 [40 C.F.R. § 265 Subpart J].

ETI failed to obtain and keep on file at the facility; (1) a written tank assessment certified by an independent, qualified registered professional engineer that atests to the tank system's integrity; (2) an approved secondary containment; and (3) tank inspections.

- Failure to comply with the manifesting requirements of 30 TAC § 335.112 [40 C.F.R. § 262, Subpart B].

  Proper transporting of the hazardous waste through manifesting ensures that waste is properly handled and managed or disposed of. Listed and characteristic hazardous wastes are manifested to ETI. ETI blends, dries, treats or repackages the waste and ships it off as a non-hazardous material,"product". Records of the hazardous waste expire at ETI, but in actuality it is shipped throughout the United States. Listed and characteristic hazardous waste is being transported throughout the United States as a "product" without the proper record, documentation, tracking or identification.

- Failure to comply with the applicable closure requirements of 30 TAC § 335.112 [40 C.F.R. § 265 Subpart G].

  The regulation requires that owners or operators of treatment, storage, and disposal facilities have a written closure plan. ETI provided an incomplete or inadequate closure plan. The plan does not identify the steps necessary to completely or partially close the facility at any point during its intended operating life. It does not identify all the hazardous waste management units. The closure plan submitted was for the permitted hazardous waste storage facilities only.

- Failure to comply with the applicable financial assurance requirements of 30 TAC § 335.112 [40 C.F.R. § 265 Subpart H].

  The owner or operator of each hazardous waste facility must establish financial assurance to ensure that funds will be available for proper closure of the facility.

- Failure to include the manifest number associated with the shipment of waste as required by 30 TAC § 335.10 [40 C.F.R. § 268.7(a)(2)(I)(C)].

Fifty-three (53) land disposal restriction (LDR) notices were found during file reviews that did not include the manifest number associated with the shipment of waste.

- Failure to maintain hazardous waste containers in good condition as required by 30 TAC § 335.112 [40 C.F.R. § 265.171].

  Two plastic drums in the container storage area in facility No. 1 were found, during inspection of the area on March 7, 1996, to have bulging lids. The two drums were labeled as containing F006 waste (aqueous copper hydroxide).

- Failure to amend the contingency plan as required by 40 C.F.R. § 264.54© and Permit Section VIII.A.

  40 CFR 264.54© requires that the contingency plan (Permit Section VIII.A) be amended immediately whenever the facility changes its design, to change the response necessary in an emergency. The map in the contingency plan on file at the facility did not indicate Facility No. 4, or evacuation routes for in and around the area of this facility.

- Failure to list all items to be inspected at each unit and component on the inspection forms used by the facility for inspections as required by Permit Section III.B.7.

  The list of all items to be inspected was not on the forms used to inspect the permitted hazardous waste tank in Facility No. 3, during the March 1996, inspection.

- Failure to maintain the necessary personnel training documents at the facility as required by 40 C.F.R. § 264.16(d) and Permit-Section III.B.8

  A written description of the type and amount of both introductory and continuing training that will be given each person filling a position related to hazardous waste management could not be provided by the facility during the March 1996, inspection.

- Failure to post legend in English, and language predominant in area surrounding the facility, as required by Permit-Section III.B.10.

Permit Section III.B.10 requires that the permittee shall post signs in English and Spanish at all main access points for each facility unit and in sufficient number and locations to be seen from any approach to active portions of the facility. The signs shall be printed so they may be clearly seen from a distance of at least 25 feet and shall state, "Danger - Unauthorized Personnel Keep Out."

No such signs were visible at the entrances to the permitted container storage area building B (receiving building). Such warning signs were posted in English but not Spanish at the entrances to three other units: (1) Facility No. 3 (hazardous waste tank and container storage area), (2) container storage area in facility No. 1, and (3) building C (container storage areas).

- Failure to transfer waste from off-site transport trucks or railcars in areas of the facility provided with secondary containment as required by Permit-Section III.B.13.

Trucks containing waste from off-site sources were observed unloading waste near the north entrance to building B (receiving building). Portions of this unloading area did not have curbing or other forms of secondary containment. A breech in the containment was immediately adjacent to where unloading occurs.

- Failure to notify the Regional Administrator of facility intent to receive hazardous waste from foreign source as required by 30 TAC § 335.112, [40 C.F.R. § 264.12 (a)].

A review of the HAZTRAKS database indicates that six shipments of D008 wastes were sent to ETI without this required notification. Five of these shipments were from the generator, Partes de Television/Reynosa, on October 24, 1994; March 15, 1994; July 1, 1994; December 17, 1993; and December 17, 1995. The U.S. importer is Zenith Electronics of McAllen, Texas. Another shipment of D008 waste was sent to ETI without notification by ETI, on September 12, 1995. This waste was generated by Telson in Agua Prieta, Sonora, Mexico and imported by Zenith Electronics of McAllen, Texas.

- Failure to comply with general inspection requirements, pursuant to 30 TAC § 335.112 [40 C.F.R. § 265.15].

This regulation requires a written schedule be developed and followed for inspecting monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment that are important to preventing, detecting, or responding to environmental or human health hazards. E.I. has a written inspection schedule, but it does not identify problems to be looked for during inspections, such as malfunction or deterioration.

- Failure to install a monitoring system to continuously measure and record ambient air concentrations of hydrogen cyanide and hydrogen sulfide as required by Permit Section IX.E.3.

  During the 1996 and 1997 inspections, the monitoring system had not been installed. E.I. claims not to be accepting wastes which contain these constituents in concentrations high enough to pose a concern.

- Failure to comply with Permit No. HW-50221-001, Section IX.B.

  During record review of E.I. waste analysis processes, numerous deviations from the permit and regulations were observed. E.I. failed to follow the approved Waste Analysis Plan, provide notices, keep and provide adequate records, conduct required performance testing or testing using the proper test method, and follow the approved sampling and analysis procedures.

- Failure to comply with Permit No. HW-50221-001, Section IX.C

  Section IX.C.1 states that E.I. shall not accept waste material if a representative sample of the waste exhibits any of the properties listed in Provision II.A.4. E.I. is receiving waste exhibiting radioactivity from Molyco.

  Section IX.C.3 prohibits acceptance of waste containing in excess of 1000 ppm VOC. At least one waste load was accepted, even though records indicate that it contained VOC in excess of the permit limitation of 1,000 ppm.

If you have any questions regarding this matter, please contact me at (214) 665-6746 or have your staff contact Agatha Benjamin, P.E., of my staff at (214) 665-7292. If you have a legal questions, your counsel may contact Nellie Rocha at (214) 665-8029.

Sincerely yours,

Eadie A. Sierra
For Desi Crouther, Chief
Hazardous Waste Enforcement Branch

Enclosure

cc: Ms. Grace Montgomery Faulkner
Waste Evaluation Section